



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12589188

Date: JUNE 15, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a metallurgical engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

After earning his doctorate, the Petitioner conducted research at [redacted] in [redacted] Ontario, and the University [redacted]. In April 2019, he began working as a research engineer at [redacted] Indiana, which filed a petition to classify the Beneficiary as an O-1A nonimmigrant with extraordinary ability. The Petitioner filed the present immigrant petition three months later. On the petition form, the Petitioner indicated that this position was permanent. While the appeal was pending, the Petitioner submitted a July 2020 letter from the [redacted] at [redacted] University [redacted] Alabama, indicating that he would begin working there as a postdoctoral fellow in August 2020. A change of address notification in February 2021 shows that the Petitioner moved from [redacted] to [redacted] Georgia. The record before us does not identify his present employer.⁴

As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Director concluded that the Petitioner only partially met the first prong under *Dhanasar*, by establishing the substantial merit of the proposed endeavor but not its national importance. We disagree with the latter determination and conclude that the Petitioner has also established the national importance of the proposed endeavor.

The introductory statement submitted with the petition indicates that the Petitioner researches “the development and characterization of [redacted] for the automotive and aerospace industries.” The Petitioner follows this very general description with details about specific past projects he conducted as a student or with former employers.

In a request for evidence (RFE), the Director instructed the Petitioner to establish that his “proposed endeavor for [redacted] has national importance.” In response to the RFE, the Petitioner elaborates upon his plans:

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a Ph.D. in metallurgical engineering from [redacted] University in [redacted] Canada in 2015.

⁴ USCIS records show that the Petitioner recently filed another immigrant petition on his own behalf, but that petition and its supporting documents are not part of the record before us.

Currently, I am working in three major fields of research in advance[d] materials development for: (i) automotive industries to address [redacted] and [redacted] [redacted] regulations, (ii) renewable energy to address the energy crisis and (iii) [redacted] manufacturing processes. My future research will be leveraged in these three fields of study.

Future Research Goals

1. Development of advanced [redacted] for the automotive industry

[redacted] is the fastest-growing material in today's automotive industry. . . . However, the ductility [redacted] is currently limiting the formability of certain parts. The main way to improve the ductility of [redacted] is to induce [redacted] changes, which is my expertise. By adding different [redacted] [redacted] the [redacted] will be changed, which will improve ductility and formability without changing the material's [redacted] properties. . . .

2. Development of [redacted] for renewable energy industries

. . . One of the barriers to the growth of renewable energy is the infrastructure – proper materials that can withstand severe weather. . . . [M]y goal is to develop [redacted] [redacted] which will have higher strength and lower cost . . . [and] will be coated with the recently developed coating that I proposed for corrosion resistance. . . .

3. Design and development of new alloys for the [redacted] manufacturing process

[redacted] . . . is a [redacted] manufacturing process having lightweight capabilities. Despite the numerous benefits, the growth of [redacted] is hindered by the high cost of powder production and its availability to print quality products. In this project, I will design and develop different types of [redacted] that are compatible with [redacted]. . . I will characterize the printed parts in terms of [redacted] and [redacted] properties, especially [redacted] performance. I will then use the results to determine the optimum processes parameter for manufacturing a balance of cost and performance in 3D printing. I will characterize the printed parts in terms of [redacted] and [redacted] properties, especially fatigue performance. I will then use the results to determine the optimum processes parameter for manufacturing a balance of cost and performance in 3D printing.

The RFE response also clarified that the Petitioner's "proposed endeavor is distinct from his proposed employment as [a] research engineer at [redacted] except insofar as "his employment . . . enables him to continue his research in the metallurgical engineering field."

In the denial notice, the Director stated that the Petitioner "failed to submit evidence establishing that [his] work for [redacted] has national importance." On appeal, the Petitioner asserts that the Director "improperly conflated employment with proposed endeavor." We agree with this assessment. In discussing the nature of the proposed endeavor, the Director quoted a letter from a manager at

[redacted] who was describing the Petitioner's then-current work at the company rather than his broader research goals. While the Petitioner initially characterized his position at [redacted] as "permanent," the record does not indicate that his intended research *requires* him to remain at that company. The July 2020 letter from the [redacted] indicates duties consistent with the proposed endeavor, stating that he will "design and implement [redacted] and detail characterization of the 3D printed parts for" aircraft. This letter is consistent with the conclusion that the Petitioner's proposed endeavor is not contingent on continued employment with [redacted]

Even in the context of the Petitioner's then-current employment, the Director did not sufficiently consider to the evidence submitted with the petition and in response to the RFE. That evidence shows that [redacted] supplies [redacted] to major automotive manufacturers. Therefore, the Petitioner's work at [redacted] to produce [redacted] components could improve the fuel efficiency of countless vehicles. The Petitioner has also referred to aerospace applications from the beginning of this proceeding; the benefits of [redacted] are, if anything, even more clearly evident for aircraft than for ground transportation. The publication of the Petitioner's research disseminates his findings, providing another avenue for implementation in the field. The Director already gave the Petitioner significant credit for the "hundreds of citations" of those published articles, so we need not repeat that discussion here.

B. Balancing Factors to Determine Waiver's Benefit to the United States

The Director concluded that the Petitioner satisfied the second *Dhanasar* prong, but not the third. As explained below, we agree with this conclusion.

In the denial notice, the Director determined that the Petitioner had not established the impracticality of securing a job offer and labor certification; sufficient urgency; or that the Petitioner has "unique knowledge or skills, [is] distinguished among [his] peers, or that [he is] the principal investigator of projects in the United States that can significantly influence [his] field."

On appeal, the Petitioner does not claim that the job offer process, including labor certification, would be impractical. The Petitioner does, however, assert that "[t]he national interest in [his] research is sufficiently urgent to warrant foregoing the labor certification process," because his "research on [redacted] is a crucial component of the [redacted] effort to reduce [redacted] [redacted] Background information about vehicle weight and renewable energy infrastructure explains why the Petitioner's work with [redacted] is *relevant* to those areas of inquiry, but not why it is so urgent that the standard job offer process would impose unacceptable delays. For example, the Petitioner does not show that his work will, in the very near future, have a substantial, rather than incremental, impact on [redacted] There is no stated or implied blanket waiver for all researchers whose work relates in some way to energy efficiency and [redacted]"⁵

⁵ We note that, having asserted that the Director erred by conflating the proposed endeavor with the Petitioner's then-current employment at [redacted] the Petitioner contends that his work meets the "urgency" test because [redacted]'s clients include the [redacted] and several automobile manufacturers. He also asserts: "His contributions to the design and production of [redacted] at [redacted] are incredibly valuable to the automotive industry."

The Petitioner also contends that “he possesses considerable knowledge, expertise, and skills in a highly specialized field.” The Petitioner, here, invites comparison to the petitioner in *Dhanasar*, whom we found “possesses considerable experience and expertise in a highly specialized field.” *Id.* at 893. In *Dhanasar*, however, the petitioner’s highly specialized field was “hypersonic propulsion systems (systems involving propulsion at speeds of Mach 5 and above).” *Id.* at 891. The present Petitioner has not established that his field of metallurgical engineering is comparably specialized.

Furthermore, expertise does not inherently establish eligibility for the waiver. As we noted in *Dhanasar* (at n.3), the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given field, and individuals of exceptional ability are generally subject to the statutory job offer requirement.

The Petitioner contends that, even if qualified U.S. workers are available, it is in the national interest to waive the job offer requirement because he is “one of the leading researchers in his field.” To support this claim, the Petitioner relies on citations to his published work. The Director already considered these citations when determining that the Petitioner satisfies the second prong of the *Dhanasar* framework.⁶ The Petitioner shows that his work has attracted more citations than that of the petitioner in *Dhanasar*, but citation rate was not a major factor in the approval of that petition. We mentioned citations only once, on page 892, when describing the submitted evidence. We made no determination that a researcher who exceeds that petitioner’s citation rate is therefore eligible for the national interest waiver.

The Petitioner has established that he is a prolific researcher in a worthwhile area of scientific inquiry, but has not shown that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

Because the Petitioner has not met the required third prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

⁶ Several factors affect the weight we give to the citation figures. The Petitioner compares his 2019 citation totals to an outdated 2018 chart published by Clarivate Analytics, and he compares his citations to those in the category of “Engineering” rather than “Materials Science” (which has higher baseline citation rates) without establishing how Clarivate classifies the relevant journals. Also, the Petitioner’s high total number of citations is partly the result of the quantity of articles the Petitioner has published. The volume of the Petitioner’s output of published work does not make the overall body of work more influential.